

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Amy J. St. Eve	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 1254	DATE	4/23/2008
CASE TITLE	Coronado vs. Valley View		

## DOCKET ENTRY TEXT

The Court grants Defendant Alan Hampton's motion to dismiss [53] based on Plaintiff's lack of capacity to sue. The Court grants Plaintiff leave to file a Second Amended Complaint to add a "next friend" to represent the minor Plaintiff. Plaintiff's Second Amended Complaint is due on or before 5/01/08. Status hearing set for 4/28/2008 is stricken and reset to 5/5/2008 at 8:30 AM

■ [ For further details see text below.]

Notices mailed by Judicial staff.

## STATEMENT

Plaintiff Roger Coronado, Jr., who is fifteen years old, filed the present Amended Complaint against Valley View Public School District 365U and various individuals based on his expulsion from Bollingbrook High School. Before the Court is Defendant Alan Hampton's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

Defendant brings the present motion based on the minor Plaintiff's capacity to sue. "Capacity has been defined as a party's personal right to come into court, and should not be confused with the question of whether a party has an enforceable right or interest or is the real party in interest." *Board of Educ. of City of Peoria, School Dist. No. 150 v. Illinois Bd. of Educ.*, 810 F.2d 707, 709-10 (7th Cir. 1987) (citation omitted). "To maintain a suit in a federal court, a child or mental incompetent must be represented by a competent adult." *T.W. by Enk v. Brophy*, 124 F.3d 893, 895 (7th Cir. 1997). Under Federal Rule of Civil Procedure 17(c) a "next friend" may bring a claim on behalf of a plaintiff who is a minor. *Id.* The Court does not appoint the next friend, instead, the next friend takes the initiative to file the lawsuit on the child's behalf. *Id.* In short, a "next friend is not a party to a suit but represents the real party, who, as a minor, lacks the capacity to sue in his own name." *See Blue v. People*, 223 Ill.App.3d 594, 596, 165 Ill.Dec. 894, 585 N.E.2d 625 (Ill.App.Ct. 1992) (citing *Severs v. Country Mutual Ins. Co.*, 89 Ill.2d 515, 520, 61 Ill.Dec. 137, 434 N.E.2d 290 (Ill. 1982)).

Because the Plaintiff is fifteen years old, he does not have the legal capacity to file this lawsuit absent a next friend, such as a parent. The Court thus grants Defendant's motion. The Court grants Plaintiff leave to file a Second Amended Complaint to add a "next friend" to represent the minor Plaintiff Roger Coronado, Jr. Plaintiff's Second Amended Complaint is due on or before May 1, 2008.